

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER CLARK, JAMES RENICK,
and VICTOR WHITAKER, individuals,

Plaintiffs,

v.

CHASE HOME FINANCE, LLC, a Delaware
LLC doing business in California; CHASE
MANHATTAN MORTGAGE
CORPORATION, a New Jersey corporation
doing business in California; and DOES 1-25,

Defendants.

Case No. 08-CV-0500 JM RBB

**ORDER GRANTING JOINT
MOTION FOR STIPULATED
PROTECTIVE ORDER RE USE OF
CONFIDENTIAL INFORMATION AS
MODIFIED BY THE COURT [DOC.
NO. 52]**

The Court recognizes that at least some of the documents and information (“materials”) being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order (“Order”) in this action.

The materials to be exchanged throughout the course of the litigation between the parties may contain trade secret or other confidential research, technical, cost, price, marketing or other commercial information, as is contemplated by Federal Rule of Civil Procedure 26(c)(7). The purpose of this Order is to protect the confidentiality of such materials as much as practical during the litigation. THEREFORE:

DEFINITIONS

1. The term “Confidential Information” shall mean and include information contained or disclosed in any materials, including documents, portions of documents, answers to interrogatories, responses to requests for admissions, trial testimony, deposition testimony, and transcripts of trial testimony and depositions, including data, summaries, and compilations derived therefrom that is deemed to be Confidential Information by any party to which it belongs.

2. The term “materials” shall include, but shall not be limited to: documents; correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other material that identify customers or potential customers; price lists or schedules or other matter identifying pricing; minutes; telegrams; letters; statements; cancelled checks; contracts; invoices; drafts; books of account; worksheets; notes of conversations; desk diaries; appointment books; expense accounts; recordings; photographs; motion pictures; compilations from which information can be obtained and translated into reasonably usable form through detection devices; sketches; drawings; notes (including laboratory notebooks and records); reports; instructions; disclosures; other writings; models and prototypes and other physical objects.

3. The term “counsel” shall mean outside counsel of record, and other attorneys, paralegals, secretaries, and other support staff employed in the law firms identified below:

- Orrick, Herrington & Sutcliffe LLP
- United Employees Law Group, P.C.

“Counsel” shall also include in-house attorneys for Defendants Chase Home Finance, LLC (on behalf of itself and as successor in interest to Chase Manhattan Mortgage Corporation).

GENERAL RULES

4. Each party to this litigation that produces or discloses any materials, answers to interrogatories, responses to requests for admission, trial testimony, deposition testimony, and transcripts of trial testimony and depositions, or information that the producing party believes should be subject to this Protective Order may designate the same as “CONFIDENTIAL.”

Designation as “CONFIDENTIAL”: Any party may designate information as

“CONFIDENTIAL” only if, in the good faith belief of such party and its counsel, the unrestricted

1 disclosure of such information could be potentially prejudicial to the business or operations of
2 such party.

3 5. In the event the producing party elects to produce materials for inspection, no
4 marking need be made by the producing party in advance of the initial inspection. For purposes
5 of the initial inspection, all materials produced shall be considered as "CONFIDENTIAL" and
6 shall be treated as such pursuant to the terms of this Order. Thereafter, upon selection of
7 specified materials for copying by the inspecting party, the producing party shall, within a
8 reasonable time prior to producing those materials to the inspecting party, mark the copies of
9 those materials that contain Confidential Information with the appropriate confidentiality
10 marking.

11 6. Whenever a deposition taken on behalf of any party involves a disclosure of
12 Confidential Information of any party:

- 13 a. said deposition or portions thereof shall be designated as containing
14 Confidential Information subject to the provisions of this Order;
15 such designation shall be made on the record whenever possible,
16 but a party may designate portions of depositions as containing
17 Confidential Information after transcription of the proceedings; a
18 party shall have until fifteen (15) days after receipt of the deposition
19 transcript to inform the other party or parties to the action of the
20 portions of the transcript designated "CONFIDENTIAL;"
- 21 b. the disclosing party shall have the right to exclude from attendance
22 at said deposition, during such time as the Confidential Information
23 is to be disclosed, any person other than the deponent, counsel
24 (including their staff and associates), the court reporter, and the
25 person(s) agreed upon pursuant to paragraph 9 below; and
- 26 c. the originals of said deposition transcripts and all copies thereof
27 shall bear the legend "CONFIDENTIAL," as appropriate, and the
28 original or any copy ultimately presented to a court for filing shall

1 not be filed unless it can be accomplished under seal, identified as
2 being subject to this Order, and protected from being opened except
3 by order of this Court.

4 7. All Confidential Information designated as "CONFIDENTIAL" shall not be
5 disclosed by the receiving party to anyone other than those persons designated herein and shall be
6 handled in the manner set forth below and, in any event, shall not be used for any purpose other
7 than in connection with this litigation, unless and until such designation is removed either by
8 agreement of the parties, or by order of the Court.

9 8. The right of any independent expert to receive any Confidential Information shall
10 be subject to the independent expert signing the form attached hereto as Exhibit A, in advance of
11 providing any Confidential Information of the producing party to the expert.

12 9. Information designated "CONFIDENTIAL" shall be viewed only by the receiving
13 party, counsel (as defined in paragraph 3) of the receiving party, by independent experts (pursuant
14 to the terms of paragraph 8), and by the additional individuals listed below, provided each such
15 individual has read this Order in advance of disclosure and has agreed in writing to be bound by
16 its terms:

- 17 a. Executives who are required to participate in policy decisions with
18 reference to this action;
- 19 b. Principals, officers, employees, agents or representatives of the
20 parties with whom Counsel for the parties find it necessary to
21 consult, in the discretion of such counsel, in preparation for trial of
22 this action;
- 23 c. Stenographic and clerical employees associated with the individuals
24 identified above;
- 25 d. Witnesses in connection with this litigation; and
- 26 e. Any mediator hired by the parties to assist in resolving this case.

27 No person shall make any disclosure of Confidential Information to any person falling within
28 categories (b) or (d) of this paragraph without first obtaining from any such person a signed

1 statement in the form attached hereto as Exhibit "A." Either party may request of the other a
2 copy (if any) of said signed statement(s) to counsel. Either party may request of the other a copy
3 (if any) of said signed statement(s) to counsel. The other party must promptly comply with such
4 a request by providing copies of the signed statement(s) by telecopier or other appropriate means,
5 and in no event beyond five (5) business days of such a request. If a party objects to the
6 disclosure of information to a particular person, the Stipulating Party objecting to such disclosure
7 shall have five days to seek a protective order from the Court barring such disclosure and no such
8 disclosure shall be made until further order of the Court.

9 10. With respect to material designated "CONFIDENTIAL," any person indicated on
10 the face of the document to be its originator, author or a recipient of a copy thereof, may be
11 shown the same.

12 11. All information which has been designated as "CONFIDENTIAL" by the
13 producing or disclosing party, and any and all reproductions thereof, shall be retained in the
14 custody of the counsel for the receiving party identified in paragraph 3, except that independent
15 experts authorized to view such information under the terms of this Order may retain custody of
16 copies such as are necessary for their participation in this litigation.

17 12. Before any materials produced in discovery, answers to interrogatories, responses
18 to requests for admissions, deposition transcripts, or other documents which are designated as
19 Confidential Information are filed with the Court for any purpose, the party seeking to file such
20 material shall seek permission of the Court to file said material under seal.

21 No items will be filed under seal without a prior application to, and order from, the judge
22 presiding over the hearing or trial. Only when the judge presiding over the hearing or trial
23 permits filing an item or items under seal may confidential material filed with the Court be filed
24 in a sealed envelope or other container marked on the outside with the caption of this action and
25 the following statement:

26 "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER"

27 If any person fails to file protected documents or information under seal, any party to this lawsuit
28 may request that the Court place the filing under seal.

1 Whenever the Court grants a party permission to file an item under seal, a duplicate
2 disclosing all nonconfidential information shall be filed and made part of the public record. The
3 item may be redacted to eliminate confidential material from the public document. The public
4 document shall be titled to show that it corresponds to an item filed under seal, e.g., "Redacted
5 Copy of Sealed Declaration of John Smith in Support of Motion for Summary Judgment." The
6 sealed and redacted documents shall be filed simultaneously.

7 13. At any stage of these proceedings, any party may object to a designation of the
8 materials as Confidential Information. The party objecting to confidentiality shall notify, in
9 writing, counsel for the designating party of the objected-to materials and the grounds for the
10 objection. If the dispute is not resolved consensually between the parties within seven (7)
11 business days of receipt of such a notice of objections, the objecting party may move the Court
12 for a ruling on the objection. The materials at issue shall be treated as Confidential Information,
13 as designated by the designating party, until the Court has ruled on the objection or the matter has
14 been otherwise resolved.

15 14. All Confidential Information shall be held in confidence by those inspecting or
16 receiving it, and shall be used only for purposes of this action. Counsel for each party, and each
17 person receiving Confidential Information shall take reasonable precautions to prevent the
18 unauthorized or inadvertent disclosure of such information. If Confidential Information is
19 disclosed to any person other than a person authorized by this Order, the party responsible for the
20 unauthorized disclosure must immediately bring all pertinent facts relating to the unauthorized
21 disclosure to the attention of the other parties and, without prejudice to any rights and remedies of
22 the other parties, make every effort to prevent further disclosure by the party and by the person(s)
23 receiving the unauthorized disclosure.

24 15. No party shall be responsible to another party for disclosure of Confidential
25 Information under this Order if the information in question is not labeled or otherwise identified
26 as such in accordance with this Order.

27 16. If a party, through inadvertence, produces any Confidential Information without
28 labeling or marking or otherwise designating it as such in accordance with this Order, the

1 designating party may give written notice to the receiving party that the document or thing
2 produced is deemed Confidential Information, and that the document or thing produced should be
3 treated as such in accordance with that designation under this Order. The receiving party must
4 treat the materials as confidential, once the designating party so notifies the receiving party. If
5 the receiving party has disclosed the materials before receiving the designation, the receiving
6 party must notify the designating party in writing of each such disclosure. Counsel for the parties
7 shall agree on a mutually acceptable manner of labeling or marking the inadvertently produced
8 materials as "CONFIDENTIAL" or "CONFIDENTIAL –SUBJECT TO PROTECTIVE
9 ORDER."

10 17. Nothing herein shall prejudice the right of any party to object to the production of
11 any discovery material on the grounds that the material is protected as privileged or as attorney
12 work product.

13 18. Nothing in this Order shall bar counsel from rendering advice to their clients with
14 respect to this litigation and, in the course thereof, relying upon any information designated as
15 Confidential Information, provided that the contents of the information shall not be disclosed.

16 19. This Order shall be without prejudice to the right of any party to oppose
17 production of any information for lack of relevance or any other ground other than the mere
18 presence of Confidential Information. The existence of this Order shall not be used by either
19 party as a basis for discovery that is otherwise improper under the Federal Rules of Civil
20 Procedure.

21 20. Nothing herein shall be construed to prevent disclosure of Confidential
22 Information if such disclosure is required by law or by order of the Court.

23 21. Upon final termination of this action, including any and all appeals, counsel for
24 each party shall, upon request of the producing party, return all Confidential Information to the
25 party that produced the information, including any copies, excerpts, and summaries thereof, or
26 shall destroy same at the option of the receiving party, and shall purge all such information from
27 all machine-readable media on which it resides. Notwithstanding the foregoing, counsel for each
28 party may retain all pleadings, briefs, memoranda, motions, and other documents filed with the

1 Court that refer to or incorporate Confidential Information, and will continue to be bound by this
2 Order with respect to all such retained information. Further, attorney work product materials that
3 contain Confidential Information need not be destroyed, but, if they are not destroyed, the person
4 in possession of the attorney work product will continue to be bound by this Order with respect to
5 all such retained information.

6 22. The restrictions and obligations set forth herein shall not apply to any information
7 that: (a) the parties agree should not be designated Confidential Information; (b) the parties agree,
8 or the Court rules, is already public knowledge; (c) the parties agree, or the Court rules, has
9 become public knowledge other than as a result of disclosure by the receiving party, its
10 employees, or its agents in violation of this Order; or (d) has come or shall come into the
11 receiving party's legitimate knowledge independently of the production by the designating party.
12 Prior knowledge must be established by pre-production documentation.

13 23. The restrictions and obligations herein shall not be deemed to prohibit discussions
14 of any Confidential Information with anyone if that person already has or obtains legitimate
15 possession thereof.

16 24. Transmission by facsimile is acceptable for all notification purposes herein.

17 25. This Order may be modified by agreement of the parties, subject to approval by
18 the Court.

19 26. The Court may modify the terms and conditions of this Order for good cause, or in
20 the interest of justice, or on its own order at any time in these proceedings. The parties prefer that
21 the Court provide them with notice of the Court's intent to modify the Order and the content of
22 those modifications, prior to entry of such an order.

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1 27. The parties agree to enter into this Stipulation pending an Order hereon by the
2 Court and to abide by all terms of this Stipulation as to any Confidential Information produced
3 prior to the Court entering its Order hereon, irrespective of whether the Court has issued, or ever
4 issues, a signed Order.

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6 Dated: January 14, 2009

ANDREW R. LIVINGSTON
ERIN M. CONNELL
ORRICK, HERRINGTON & SUTCLIFFE LLP

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8
9 BY: s/Erin M. Connell
Erin M. Connell
Attorneys for Defendants
10 E-mail: econnell@orrick.com

11 Dated: January 14, 2009

GREGORY A. DOUGLAS
UNITED EMPLOYEES LAW GROUP, P.C.

12
13 BY: s/Gregory A. Douglas
Gregory A. Douglas
Attorneys for Plaintiffs
14 E-mail: gdouglas@hainesfirm.com
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17 IT IS SO ORDERED this 28th day of January, 2009.
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The Honorable Ruben B. Brooks
21 Magistrate Judge, United States District Court
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EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER CLARK, JAMES RENICK,
and VICTOR WHITAKER, individuals,

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CHASE HOME FINANCE, LLC, a Delaware
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Defendants.

Case No. 08-CV-0500 JM RBB

**AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER**

I, _____, declare and say that:

1. I am employed as _____ by

_____.

2. I have read the Protective Order entered in *Christopher Clark, James Renick, and Victor Whitaker v. Chase Home Finance, LLC, and Chase Manhattan Mortgage Corporation*, Case No. 08-CV-0500 JM RBB, and have received a copy of the Protective Order.

3. I promise that I will use any and all “Confidential” or “Confidential – For Counsel Only” information, as defined in the Protective Order, given to me only in a manner authorized by the Protective Order, and only to assist counsel in the litigation of this matter.

1 4. I promise that I will not disclose or discuss such “Confidential” or “Confidential –
2 For Counsel Only” information with anyone other than the persons described in paragraphs 3, 8
3 and 9 of the Protective Order.

4 5. I acknowledge that, by signing this agreement, I am subjecting myself to the
5 jurisdiction of the United States District Court for the Southern District of California with respect
6 to enforcement of the Protective Order.

7 6. I understand that any disclosure or use of “Confidential” or “Confidential – For
8 Counsel Only” information in any manner contrary to the provisions of the Protective Order may
9 subject me to sanctions for contempt of court.

10 I declare under penalty of perjury that the foregoing is true and correct.

11 Date: _____

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